See also cases Nos. 270-471-472

CERTIFICATE

Supreme Court of the United States

OCTOBER TERM, 1934

No. 531

F. EUGENE NORTZ

vs.

THE UNITED STATES.

ON CERTIFICATE FROM THE COURT OF CLAIMS

FILED NOVEMBER 16, 1934.

SUPREME COURT OF THE UNITED STATES

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No. 531

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INDEX

	Original	Print
Certificate from Court of Claims	1	1
Statement of facts	1	1
Questions certified	4	3
Judges' signatures	6	4
Clerk's certificate	7	4

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[fol. 1]

IN COURT OF CLAIMS OF THE UNITED STATES

No. 42605

F. EUGENE NORTZ

v.

THE UNITED STATES

Statement of Facts and Certificate

Messrs. Katz and Sommerich appeared for the plaintiff.
Messrs. George C. Sweeney, Alexander Holtzoff, William W. Scott, and Harry LeRoy Jones appeared for the defendant.

Before Chief Justice Booth, Judge Green, Judge Littleton, Judge Williams, and Judge Whaley.

STATEMENT OF FACTS

The Court of Claims hereby certifies that the record of the above-entitled case now pending before it discloses the following facts, stated in plaintiff's petition filed February 28, 1934:

1. That on January 17, 1934, and for a long time prior thereto, claimant was the owner and holder of gold certificates issued by the Secretary of the Treasury of the United States or by the Treasurer of the United States, of the face or nominal amount of $106,300—in the denominations and bearing the serial numbers set forth in the annexed Schedule A, wherein and whereby the defendant, pursuant to the acts of Congress appertaining thereto, certified that there had been deposited in the Treasury of the United States $106,300—in gold coin, which said gold coin the defendant certified would be paid to your claimant as the holder of said gold certificates on demand.

[fol. 2] 2. That under and pursuant to the laws of the United States in force at the time of the issuance of said gold certificates, at the time of the acquisition of same by your claimant and at all times up to and including Janu-

ary 17, 1934, a dollar in gold consisted of 25.8 grains of gold, .9 fine.

3. That by virtue of the agreement between your claimant, as the owner of said certificates, and the defendant, pursuant to whose authority said certificates had been issued, and the laws of the United States in such case made and provided relating to the issuance and redemption of such gold certificates, your claimant was entitled to receive from the defendant one ounce of gold for each $20.67 of gold certificates owned and held by him.

4. That heretofore and on January 17, 1934, your claimant duly presented the gold certificates owned and held by him as heretofore described and of the face value of $106,300, and demanded of the defendant that it redeem same by payment to claimant of gold coin to the extent and in the amount hereinbefore mentioned.

5. That on January 17, 1934, and for some time prior and subsequent thereto, an ounce of gold was of the value at least of $33.43.

6. That claimant, upon his demand as hereinbefore specified, was, by virtue of his ownership of the gold certificates, entitled to receive in redemption thereof 5,104.22 ounces of gold of the value of $170,634.07.

[fol. 3] 7. That the defendant refused to comply with your claimant's demand and refused to redeem said gold certificates in the manner specified therein and as prescribed by the laws of the United States.

8. That, in view of the penalties imposed under and by virtue of the Order of the Secretary of the Treasury, approved by the President of the United States on January 15, 1934, supplementing the Order of December 28, 1933, and the laws and regulations pursuant to which said Orders were issued, which said laws and regulations and said Orders, your claimant contends, were unconstitutional and invalid and constituted a deprivation of property without due process of law, and which invalid and unconstitutional Orders, laws and regulations required the delivery by your claimant of the gold certificates thus owned and held by him, your claimant delivered said gold certificates to the defendant under protest and received in exchange therefor under

protest currency of the United States in the sum of $106,-300, which currency was and is not redeemable in gold.

9. That your claimant accepted said currency in redemption of the gold certificates owned and held by him under protest solely by virtue of the coercion and threats contained in the aforesaid Orders, regulations and statutes.

10. That by reason of the circumstances aforesaid, your claimant was damaged in the sum of $64,334.07, which sum is now due and owing by the United States to your claimant, and no part of which has been paid.

[fol. 4] 11. That no action has been had on this claim in Congress or by any of the departments, except as hereinabove stated. The claimant is the sole owner of this claim, and the only person interested therein. No assignment or transfer of this claim or of any part thereof or interest therein has been made. The claimant is justly entitled to the amount herein claimed from the United States after allowing all just credits and offsets.

12. That the claimant herein has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the United States of America.

13. That your claimant is and at all times herein mentioned was a citizen of the United States.

14. That the claimant believes the facts as stated in this petition to be true.

Wherefore, claimant demands judgment against the United States for the sum of $64,334.07 with any interest due thereon.

To this petition the defendant has filed a demurrer, on the ground that the petition does not state a cause of action against the United States.

The defendant, by the filing of this demurrer, admits the facts stated in the petition to be true, and upon the record before it the court finds it necessary for a proper disposition of the case that certain questions of law should be determined. They are as follows:

QUESTIONS CERTIFIED

1. Is an owner of gold certificates of the United States, Series of 1928, not holding a Federal license to acquire or

hold gold coins or gold certificates, who, on January 17, [fol. 5] 1934, had surrendered his certificates to the Secretary of the Treasury of the United States under protest and had received therefor legal tender currency of equivalent face amount, entitled to receive from the United States a further sum inasmuch as the weight of a gold dollar was 25.8 grains, nine-tenths fine, and the market price thereof on January 17, 1934, was in excess of the currency so received?

2. Is a gold certificate, Series of 1928, under the facts stated in question 1 an express contract of the United States in its corporate or proprietary capacity which will enable its owner and holder to bring suit thereon in the Court of Claims?

3. Do the provisions of the Emergency Banking Act of March 9, 1933, and the Order of the Secretary of the Treasury dated December 28, 1933, requiring the plaintiff as owner of gold certificates as stated in question 1 to deliver the same to the Treasury of the United States in exchange for currency of an equivalent amount, not redeemable in gold, amount to a taking of property within the meaning of the Fifth Amendment to the Constitution of the United States?

It is respectfully requested that the Supreme Court of the United States give appropriate instructions on the above questions and certify and transmit and refer the same to the Court of Claims of the United States for its [fol. 6] guidance in the further progress of the case.

Fenton W. Booth, Chief Justice. Wm. R. Green, Judge. Benjamin H. Littleton, Judge. T. S. Williams, Judge. Richard J. Whaley, Judge.

[fol. 7] I, Willard L. Hart, Chief Clerk of the Court of Claims of the United States, do hereby certify that the foregoing certificate in the case of F. Eugene Nortz v. The United States, No. 42605, was duly filed and entered of record in my office by order of said court, and as directed by said court, the said certificate is by me transmitted to the Supreme Court of the United States for its action thereon.

In testimony whereof I hereunto subscribe my name and affix the seal of the Court of Claims of the United States at

my office in Washington, D. C., this 14th day of November, A. D. 1934.

Willard L. Hart, Chief Clerk, Court of Claims of the United States. (Seal Court of Claims.)

[fol. 8] [Endorsed:] No. 42605. F. Eugene Nortz v. The United States. Questions certified by Court of Claims.

Endorsed on cover: File No. 39,159. Court of Claims. Term No. 531. F. Eugene Nortz v. The United States. Certificate. Filed November 16, 1934. File No. 531, O. T., 1934.